

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

D'ANGELO ROYSTER,

Plaintiff,

Case No. 2:06-cv-293

v.

Honorable Robert Holmes Bell

CHAPLAIN GERALD RILEY, et al.,

Defendants.

OPINION AND ORDER APPROVING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

The Court has reviewed the Report and Recommendation that Plaintiff's motions for a declaratory judgment and for a preliminary injunction be denied. The Report and Recommendation was duly served on the parties. Plaintiff has filed objections and a motion for immediate consideration. In accordance with 28 U.S.C. § 636(b)(1), the Court has performed *de novo* consideration of those portions of the Report and Recommendation to which objection has been made. The Court now finds the objections to be without merit.

Plaintiff seeks a preliminary injunction ordering the Michigan Department of Corrections to place Plaintiff on either a Zen Buddhist diet or a vegan diet. He presently is provided a vegetarian diet, which is allegedly unsuitable because he is lactose intolerant. He receives medication for his lactose intolerance. It is well established that "[t]he purpose of a preliminary injunction is simply to preserve the status quo," *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004), until a trial on the merits can be held. *Six Clinics Holding Corp. II v. Cafcomp*

Sys., Inc., 119 F.3d 393, 400 (6th Cir. 1997). The court applied the correct legal standard and considered the four factors for granting a preliminary injunction: the Plaintiff's likelihood of success on the merits; the risk of irreparable injury to Plaintiff without the preliminary injunction; the risk of harm to others; and the public interest. *See Coalition to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006). Considering the allegations in the complaint and Plaintiff's additional arguments in his objections, Plaintiff has not demonstrated that he has a substantial likelihood of success on the merits. *See, e.g., DeHart v. Horn*, 390 F.3d 262, 269-70 (3d Cir. 2004) (prison's failure to provide Buddhist prisoner with religious-based diet free of pungent vegetables with special whole grain bread and soy milk was not unconstitutional); *Spies v. Voinovich*, 173 F.3d 398, 406-07 (6th Cir. 1998) (where prisoner acknowledged that a vegan diet was not a requirement for Zen Buddhist adherents, prisoner's rights were not violated when prison provided a vegetarian diet). In addition, Plaintiff has not demonstrated that he will suffer irreparable harm without the preliminary injunction. Plaintiff filed this lawsuit in 2006, although he alleges that he has been a Zen Buddhist since 1998. Plaintiff offers no explanation for why he did not consider the vegetarian diet he was provided during these eight years to be irreparably harmful. Moreover, Plaintiff receives medication for his lactose intolerance, which presumably permits him to eat the dairy products included in the vegetarian diet.

Plaintiff also seeks a declaratory judgment. The Federal Declaratory Judgment Act provides that any Federal Court "may declare the rights and other legal relations of any interested party seeking" a declaration in a controversy over which the Court otherwise has jurisdiction. 28 U.S.C. § 2201(a). Because granting Plaintiff's request will require the resolution of disputed questions of fact, a declaratory judgment at this stage of the proceeding, with an undeveloped record, would be premature.

THEREFORE, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (Docket #14) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motions for a preliminary injunction and declaratory judgment (Docket #4 and #5) and motion for immediate consideration (Docket #24) are DENIED.

Dated: May 31, 2007

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE